

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12663 of 1994

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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Versus

STATE OF GUJ &2

Appearance:

MR YOGESH S LAKHANI for Petitioner No. 1

MR KL PANDYA, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/03/2004

ORAL JUDGEMENT

1. The petitioner is a partnership firm carrying on its business at Supedi, Taluka Dhoraji, District Rajkot.

2. The short facts of the case are as under:

2.1 The premises of the petitioner firm were

inspected by the Deputy Collector, Gondal on 24th October 1991 and a Panchnama was prepared in the presence of the partner of the petitioner firm. The seized Solvent Extract Groundnut Refined Oil quantity is of 10780 Kgs. Pursuant to the said inspection a notice was issued by respondent no.2 Collector, Rajkot on 19th May 1992 at Annexure-A to the petition. The petitioner filed a reply on 23rd June 1992 taking all contentions including that the oil cake is not included within the definition of "essential article" and that there is no breach of any of the provisions of Essential Commodities Act, 1955 (hereinafter referred to as the "said Act"). It was also contended by the petitioner that the Collector has no power to issue any direction under Clause 24 of the Gujarat Essential Articles (Licencing Control and Stock Declaration) Order, 1981 (hereinafter referred to as "the Order of 1981"). A copy of the reply is produced at Annexure-B to the petition.

2.2 The respondent no.2 Collector, after hearing the petitioner, passed an order on 10th September 1992, which is at Annexure-C to the petition, whereby the entire seized quantity of solvent extracted groundnut refined oil (hereinafter referred to as "SEGN") weighting 10780 kgs worth Rs.3,80,420/- was ordered to be confiscated under section 6-A of the said Act.

2.3 Feeling aggrieved by the order of the Collector the petitioner approached the State Government by way of an appeal on 8.10.1992. The appeal memo is produced at Annexure-D to the petition. The State Government by order dated 20th October 1994 (Annexure-F to the petition) confirmed the order of the Collector dated 10th September 1992.

3. The petitioner therefore approached this Court by way of the present petition. This Court earlier granted status quo and while admitting the petition confirmed ad interim relief granted earlier.

4. I have heard the learned counsel for the respective parties and perused the relevant evidence on record.

5. Mr. Y.S. Lakhani, learned Advocate for the petitioner, submitted that SEGN is not covered under the said Act, that the Collector has not considered the reply filed by the petitioner firm, and that the Collector could not have seized the quantity of 1530 Kgs which was found on the register of the petitioner firm and could have passed order of seizure of only 9250 Kgs of SEGN.

6. The Collector has dealt with each and every contentions raised by the petitioner in the reply and after hearing the Advocate for the petitioner found that there is a clear violation of the provisions of the said Act (at page 36 of the petition) and it was further found that the total quantity of 4300 Kgs of SEGN and 278826 Kgs of groundnut solvent were unaccounted.

6.1 It was also found that the petitioner has not maintained register as required under the Act.

6.2 Apart from that, the solvent was purchased from an oil mill which was not functioning at the relevant time and that the goods were purchased from Venus Industries, Dhoraji. The Collector has also given reasons for not granting application for cross-examination in view of the fact that the statements were recorded in the presence of Panchas, where partner of the petitioner firm was also present.

6.3 Thus, relying upon the conduct and method of operation of the petitioner, the Collector has passed an order for confiscation of 10780 Kgs of SEGN worth Rs.3,84,420/-.

6.4 Even the State Government has dealt with all the arguments on page 48 of the petition, and after considering all the contentions raised by the petitioner, has confirmed the order of the Collector.

7. The present petition being under Articles 226/227 of the Constitution of India, and the orders being passed by the authorities which are specialized in particular field, this Court has very limited jurisdiction for dealing with such orders. Apart from that this Court is not sitting in appeal over the decision of State Government. Both the authorities have followed the procedure and sufficient opportunities were given to the petitioner.

8. The first contention raised by Mr. Lakhani is attractive, but is not acceptable in view of the fact that the solvent was of product which was covered under the provisions of the Act.

7. However, there is some substance in the argument of Mr. Lakhani that the quantity of SEGN which was on the stock register could not have been seized by the authority. It is true that in the notice itself the Collector has mentioned that in the Register stock of

1530 Kgs is referred, but at the same time quantity of 9250 Kgs of SEGN was seized. Therefore, the order to that effect is erroneous and required to be interfered.

8. In the premises aforesaid, the petition is partly allowed. It is directed that the petitioner is entitled to get the 1530 kgs of SEGN back seized by the authority. Accordingly, the petitioner shall be entitled to encash the bank guarantee in respect of the 1530 kgs of SEGN. The other quantity of 9250 kg is required to be seized. Accordingly the order of seizure of the quantity of 9250 Kgs of SEGN is confirmed and the order with respect of 1530 kgs of SEGN is set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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